

Exhibit “A”

Chapter 84-74  
Kensington Combining District  
Final Planning Commission Draft

**KENSINGTON COMBINING DISTRICT**

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

**SECTION I. SUMMARY.** This ordinance amends the County Ordinance Code to add the Kensington Combining District, which adds land use regulations within any area added to the District. (Ord. 2004- § 1.)

**SECTION II.** Chapter 84-74 is added to the County Ordinance Code to read:

**Chapter 84-74**  
**KENSINGTON COMBINING DISTRICT**

**Article 84-74.2**  
**General**

**84-74.202 Kensington (-K) combining district.** All land within a land use district combined with the Kensington combining (-K) district shall be subject to the following additional regulations set forth in this chapter. (Ord. 2004- , § 2.)

**84-74.204 Purpose and intent.**

- (a) The purpose of this chapter is to provide specific regulation to fairly and efficiently implement the Contra Costa County General Plan Policies for the Kensington Area so that future development recognizes the rights of property owners to improve the value and enjoyment of their property while minimizing impacts upon surrounding neighbors and not substantially impairing the value and enjoyment of their neighbors' property; maintains the community's property values; and promotes the general welfare, public health and safety.
- (b) It is a further purpose of this chapter to promote the community's values of preservation of views, light and solar access, privacy, parking, residential noise levels, and compatibility with the neighborhood with regard to bulk and scale.
- (c) Features of a development that could influence these values include but are not limited to siting, size, bulk, building envelope, height, setbacks, relative scale, off-street parking spaces, window placement, artificial lighting, and location of mechanical devices such as motors, fans and vents. (Ord. 2004- , § 2.)

**84-74.206 Priority.** Where there is any conflict between the regulations of this chapter and those of the underlying zoning district, the requirements of this chapter shall govern. Otherwise, the regulations found in Division 82 and Chapter 84-4 shall apply to the Kensington Combining District. (Ord. 2004- , § 2.)

## **Article 84-74.4**

### **Definitions**

**84-74.402 General.** Unless specified in this article, the terms used in this chapter are defined as in other chapters of this title. (Ord. 2004- , § 2.)

**84-74.404 Definitions.** For purposes of this chapter, the following words and phrases have the following meanings:

- (a) “Attic” means the space between the ceiling of the top story or top half-story, and the roof, of a building.
- (b) “Basement” means any area in a building or structure where the finished floor directly above the area is less than four feet above preconstruction grade or finished grade, whichever is lower.
- (c) “Bulk” means the volume of the building or structure, including interior courtyard, if any, with height of said courtyard measured to the top plate of the adjoining top story.
- (d) “Crawl space” means an area at, just above, or just below grade and enclosed within the building or structure, which is unconditioned, unfinished and not habitable as a result of insufficient ceiling height to meet applicable building code standards.
- (e) “Design” means the physical characteristics of the building or structure, such as bulk, fenestration, hipped roof, and eaves.
- (f) “Development,” for the purposes of this chapter, means any building or structure that requires a building permit, unless exempted under section 84-74.604.
- (g) “Envelope” means a building’s or structure’s three dimensional solid figure as defined by the exterior faces of the enclosing walls and roofs and including vertical extensions to the ceiling of the top story of eaves, balconies, decks, fenestration, and interior courtyards.
- (h) “Gross floor area” means the total horizontal area in square feet of each floor inclusive of the exterior walls of all buildings on a parcel, as measured at the exterior face of the enclosing wall. Gross floor area includes attached and detached primary and accessory buildings, interior courtyards, garages, and carports with roof covering. Gross floor area does not include the area in attics, crawl spaces, basements, and uncovered balconies,

decks, and patios.

- (i) “Interior courtyard” means an unroofed area contained within a building that is bounded on at least three sides by roofed interior space, provided the two opposing walls are each at least 10 feet in depth.
- (j) “Light” means a living area’s access to open sky unobstructed by buildings or structures.
- (k) “Living areas” mean rooms in the residential buildings on a parcel that have at least one exterior window or door. Living areas do not include attics, crawl spaces, basements, accessory buildings, garages, and carports.
- (l) “Neighborhood” and “neighboring” mean real properties within 300 feet of the subject property. “Surrounding neighbors” and “neighbors” mean owners of real properties within 300 feet of the subject property.
- (m) “Obstruction” means any substantial blockage or diminution by the proposed development on surrounding neighbors’ light, solar access, view, or pre-existing solar energy systems. An obstruction may be caused by a building, a structure, or by attached appendages, such as fire escapes, open stairways, chimneys, sills, belt-courses, cornices, eaves, trellises, or other nonvegetative ornamental features.
- (n) “Parcel area” means the total horizontal area included within the property lines of a parcel.
- (o) “Scale” means the relative size of a building as compared to other buildings in the neighborhood.
- (p) “Siting” means the location of the envelope of a building or structure on a parcel.
- (q) “Solar access” means a living area’s direct sunlight unobstructed by buildings or structures.
- (r) “View” means a scene from a window in habitable space of a neighboring residence. The term “view” includes both up-slope and down-slope scenes, but is distant or panoramic range in nature, as opposed to short range. Views include but are not limited to scenes of skylines, bridges, distant cities, distinctive geologic features, hillside terrain, wooded canyons, ridges, and bodies of water. (Ord. 2004- , § 2.)

#### **Article 84-74.6 Exemptions**

**84-74.602 General.** All land within a land use district combined with the –K District is exempt

from the provisions of Section 82-10.002 (c), Small Lot Occupancy. (Ord. 2004- , § 2.)

**84-74.604 Exemptions.** The following developments are exempt from the requirements of this chapter:

- (a) Commercial buildings, churches, public buildings, schools, or residential second units that meet all applicable code requirements.
- (b) One story accessory buildings with an area of less than 120 square feet sited within the applicable setbacks.
- (c) Repair or replacement of legally constructed residences destroyed or damaged by fire, explosion, act of God or the public enemy, or other accident or catastrophe, if both of the following conditions are satisfied:
  - (1) The siting and envelope are the same; and
  - (2) The application for repair or replacement is submitted within two years of the destruction.
- (d) Developments within the -K District for which application was accepted as complete before the effective date of this chapter.
- (e) Development within an existing building or structure that does not expand its envelope. (Ord. 2004- , § 2.)

#### **Article 84-74.8 Hearing Requirement**

##### **84-74.802 Threshold standard triggering hearing requirement.**

- (a) If the proposed development results in a gross floor area that exceeds the threshold standard set forth in this section, a hearing is required in accordance with section 84-74.1006.
- (b) The threshold standard is the product of the values of PA and X, increased to the next highest 100 unless the product of PA and X is evenly divisible by 100.
- (c) In calculating the threshold standard, the value of PA is the parcel area in square feet. The value of X is determined by one of the following formulas:
  - (1) For parcels with an area of fewer than 5,000 square feet, X equals 0.500.

- (2) For parcels with an area of 5,000 square feet or more but fewer than 7,000 square feet, X is calculated by subtracting the product of 0.00005 and PA from 0.750 [ $X = 0.750 - 0.00005(PA)$ ].
- (3) For parcels with an area of 7,000 square feet or more but fewer than 10,000 square feet, X is calculated by subtracting the product of 0.00002 and PA from 0.540 [ $X = 0.540 - .00002(PA)$ ].
- (4) For parcels with an area of 10,000 square feet or more but fewer than 20,000 square feet, X is calculated by subtracting the product of 0.000013 and PA from 0.470 [ $X = 0.470 - 0.000013(PA)$ ].
- (5) For parcels with an area of 20,000 square feet or more, X equals 0.220. (Ord. 2004- , § 2.)

### **Article 84-74.10 Review Procedure**

**84-74.1002 Administrative decision or hearing.** Any application for a permit submitted to the community development department for a building permit for development or expansion of the envelope of a building or structure on a parcel within the –K District that is not exempt under article 84-74.6 is subject to the review procedure under this article. This article does not exempt an application from any applicable variance requirements of article 26-2.20. (Ord. 2004- , § 2.)

**84-74.1004 Notice.** Notwithstanding the provisions of section 26-2.2104, before the zoning administrator decides any application pursuant to this article, the community development department shall mail or deliver notice of intent to decide the application, pursuant to Government Code Section 65091 and the notice provisions of section 26-2.2004 of the code. The notice shall state the last day to request a public hearing on the application (which shall be no fewer than 34 days after date of mailing), the general nature of the application (including any subdivision exception requested), the review process, and the street address, if any, of the property involved or its legal or boundary description if it has no street address. (Ord. 2004- , § 2.)

#### **84-74.1006 Determination of whether hearing is required.**

- (a) A public hearing on an application is not required unless:
  - (1) The threshold standards in section 84-74.802 are exceeded; or
  - (2) A written request for public hearing is filed with the community development department within 34 calendar days after the notice is mailed.

- (b) If a public hearing is required, the community development department will schedule a public hearing on the application in accordance with applicable provisions of chapter 26-2. (Ord. 2004-\_\_\_\_, § 2.)

**Article 84-74.12**  
**Standards of Consideration**

**84-74.1202 Where no hearing is held.** If a hearing is not required under the provisions of section 84-74.1006, the application shall be approved. (Ord. 2004-\_\_\_\_, § 2.)

**84-74.1204 Where a hearing is held.** If a hearing is held pursuant to the provisions of section 84-74.1006, the zoning administrator shall consider the application in accordance with the provisions of this article. (Ord. 2004-\_\_\_\_, § 2.)

**84-74.1206 Standards of consideration at hearing.**

- (a) To ensure the development will promote the values articulated in section 84-74.204 and promote the general welfare, public health and safety of the community, the zoning administrator shall evaluate siting, size, bulk, building envelope, height, setbacks, relative scale, off-street parking spaces, window placement, artificial lighting, and location of mechanical devices, such as motors, fans and vents. These features of the development shall be evaluated on the basis of their impacts on the neighboring properties, with regard to view protection, obstructions, privacy in living areas, parking, light and solar access, maintaining residential noise levels, and compatibility with the neighborhood with regard to bulk and scale.
- (b) In reaching a decision, the zoning administrator shall apply a standard that balances the following factors: (1) recognizing the rights of property owners to improve the value and enjoyment of their property; (2) minimizing impacts upon surrounding neighbors; (3) protecting the value and enjoyment of the neighbors' property; (4) maintaining the community's property values; (5) maximizing the use of existing interior space; and (6) promoting the general welfare, public health, and safety. Balancing of these factors will not result in the prohibition of development that is compatible with the neighborhood with regard to bulk and scale on parcels undeveloped as of the effective date of this ordinance.
- (c) To assess solar access impacts, when appropriate, the community development director may require the applicant to provide sun shadow analyses showing the impact of the proposed development on neighboring properties. The review process shall evaluate the impacts in accordance with the purpose and intent of this ordinance as set forth in section 84-74.204(a). The zoning administrator may condition approval of the development by requiring mitigation through design and siting. (Ord. 2004-\_\_\_\_, § 2.)

**84-74.1208 Approval.** If the zoning administrator finds that the criteria stated in section 84-74.1206 and other applicable requirements are satisfied, the zoning administrator may approve the development plan. (Ord. 2004- , § 2.)

**84-74.1210 Appeal.** Any interested party may appeal a decision made by the zoning administrator under this chapter in accordance with the provisions of article 26-2.24. (Ord. 2004- , § 2.)

**SECTION III.** Section 82-4.290 is added to the County Ordinance Code, to read:

**82-4.290 Basement.** "Basement" means any area in a building or structure where the finished floor directly above the area is less than six feet above preconstruction grade or finished grade, whichever is lower. (Ord. 2004- , § 3.)

**SECTION IV. EFFECTIVE DATE.** This ordinance becomes effective 30 days after passage, and within 15 days of passage shall be published once with the names of the supervisors voting for and against it in the Contra Costa Times, a newspaper published in this County.

PASSED ON \_\_\_\_\_ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: John Sweeten,  
Clerk of the Board of Supervisors  
and County Administrator

\_\_\_\_\_  
Board Chair

By \_\_\_\_\_  
Deputy

[SEAL]

TLG:

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## Exhibit “B”

Public Comments, Negative Declaration & Initial Study

October 22, 2004

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COMMUNITY  
DEVELOPMENT DEPT

Ryan Hernandez, Planner  
Contra Costa County, Community Development Department  
651 Pine Street, 2nd Floor – North Wing  
Martinez, CA 94553-1295

Dear Mr. Hernandez:

Re: Draft Mitigated Negative Declaration - Proposed Amendments to the General Plan and Ordinance Code for Residential Design Compatability and Preservation of Views for the Community of Kensington, Contra Costa County.

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Proposed Draft Mitigated Negative Declaration for Proposed Amendments to the General Plan and Ordinance Code for Residential Design Compatability and Preservation of Views for the community of Kensington. EBMUD notes that the intent of the General Plan and Zoning changes is to promote a comprehensive residential design standard for the Kensington Area and that no changes to allow additional development are proposed. Based on this understanding of the project, EBMUD has the following comments.

## **WATER SERVICE**

EBMUD provides water service to the Kensington Area through the following pressure zones:

- Central Pressure Zone - service elevation range between 0 and 100 feet
- Aqueduct Pressure Zone - service elevation range between 100 and 200 feet
- Berryman Pressure Zone - service elevation range between 200 and 400 feet
- Terrace Regulated Pressure Zone - service elevation range between 400 and 500 feet
- Summit Pressure Zone - service elevation range between 500 and 700 feet
- Arlington Pressure Zone - service elevation range between 700 and 900 feet

Any projects developed under the new General Plan and Ordinance Code will be subject to the following general requirements.

Main extensions to provide adequate domestic water supply, fire flows, and system redundancy, at the project sponsor's expense, will be required to serve any developments. Pipeline and fire hydrant relocations or replacements due to modifications to existing streets, and off-site pipeline improvements, also at the project sponsor's expense, may be required depending on EBMUD metering requirements and fire flow requirements set by the local fire department. Project

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sponsors should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions of providing water service to specific developments, once development plans have been finalized. Engineering and installation of new and relocated pipelines and services requires substantial lead-time, which should be provided for in the project sponsor's development schedule.

## **WATER CONSERVATION**

Amending the Contra Costa General Plan and Kensington Area Ordinance presents an opportunity to incorporate water conservation measures into the design review policies and process. EBMUD staff would appreciate the opportunity to meet with Contra Costa County and Kensington staff. A key objective of this discussion will be to explore opportunities to expand water conservation via early consideration of EBMUD's best management practices applicable to projects subject to the General Plan. EBMUD is attempting to enhance water conservation awareness during normal rainfall years, assist with peak demand reduction during unseasonably hot weather, and to assist in implementing emergency measures during droughts. EBMUD encourages existing and new customers to be more water efficient through water smart practices such as:

- Improving irrigation efficiency through good design and maintenance.
- Reducing run-off, over-spray and over-watering through hardware upgrades and smart water management (to achieve a water budget).
- Lowering landscape water requirement through appropriate plant selection.

In 1993, The State Model Landscape Ordinance AB 325 (State Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495) required cities and counties adopt a water efficient landscape ordinance. EBMUD recommends that this document be referenced as the guideline to establish minimum requirements for new development and for major renovation projects.

## **WASTEWATER**

EBMUD's Main Wastewater Treatment Plant is anticipated to have adequate dry weather capacity to treat the proposed wastewater flow from this project, provided this wastewater meets the standards of the EBMUD's Environmental Services Division. However, should new projects arise under the new General Plan, developers should note that Stege Sanitary District's Infiltration/Inflow (I/I) Correction Program set a maximum allowable peak wastewater flow from each subbasin within Stege Sanitary District and EBMUD agreed to design and construct wet weather conveyance and treatment facilities to accommodate these flows. EBMUD prohibits discharge of wastewater flows above the allocated peak flow for a subbasin because conveyance and treatment capacity for wet weather flows may be adversely impacted by flows above this agreed limit. Future developers need to confirm with Stege Sanitary District that there is available capacity within the subbasin flow allocation and that it has not been allocated to

other developments. Projected peak wet weather wastewater flows need to be determined to assess the available capacity within the subbasin and confirmation included in subsequent project specific environmental documentation. Suggested language to include in any subsequent environmental documentation is as follows: "Stege Sanitary District has confirmed that there is available wastewater capacity within Subbasin (*insert subbasin number here*) that is reserved for this project."

In general, any future projects should address the replacement or rehabilitation of the existing sanitary sewer collection system to prevent an increase in I/I. Please include a provision to control or reduce the amount of I/I in the environmental documentation for these projects. The main concern is the increase in total wet weather flows, which could have an adverse impact if the flows are greater than the maximum allowable flows from this subbasin.

If you have any questions concerning this response, please contact David J. Rehnstrom, Senior Civil Engineer, Water Service Planning, at (510) 287-1365.

Sincerely,

A handwritten signature in dark ink, appearing to read "William R. Kirkpatrick", with a stylized flourish at the end.

WILLIAM R. KIRKPATRICK  
Manager of Water Distribution Planning

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CONTRA COSTA  
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COMMUNITY DEVELOPMENT DEPT.

Brian E. Stone, Successor Trustee  
Stone Living Trust dated December 16, 1991  
554 Cooper Drive  
Benicia, CA 94510

Phone: 707 748-5660

Date: November 2, 2004

Attention: Ryan Hernandez  
Contra Costa County  
Community Development Department  
Current Planning Division  
651 Pine Street North Wing - 2<sup>nd</sup> Floor  
Martinez, CA 94553-0095

Re: Comments on the **adequacy of the environmental documents** relating to  
Kensington Urgency Interim Ordinance No. 2004-33 and  
Proposed Kensington Planning Ordinance (12/03 version)

Assessor's Parcel No. 570-251-014-9, Lots 7, 8, 9, and 10, Block "N",  
Berkeley Woods Addition, (Across from 272 Los Altos Drive, Kensington, CA)

Ryan:

Consider the following comments regarding the **adequacy of the environmental documents** relating to Kensington Urgency Interim Ordinance No. 2004-33, Proposed Kensington Planning Ordinance (12/03 version), and proposed amendment to the General Plan relating to the subject ordinance. This is in response to the Notice of Public Review and Intent to Adopt a Proposed Negative Declaration filed October 13, 2004, with S. L. Weir, County Clerk.

- Summary

Initial Study (aka Environmental Check List Form) does not describe the impact on affected environment in a meaningful way. The ordinance seeks to impose additional requirements on lots larger than 6000 ft<sup>2</sup> yet there is NO quantification of affected parcels. How many substandard lots [ $<6000 \text{ ft}^2$ ] (currently subject to a design review), standard lots [ $6000+ \text{ ft}^2$ ] (soon to become subject to design review), and vacant lots (standard and substandard) are there? Supposedly, there are not very many  $6000+ \text{ ft}^2$  lots in Kensington. What will be the additional costs? Whom will bear this cost? What will be the addition time involved for this review? This study about imposing additional requirements without describing the impacts is an incomplete study.

Little or no distinction is made between developed and undeveloped parcels. The Initial Study does not make any distinction. The PROPOSED POLICIES language to be added to the General makes no distinction between developed and undeveloped parcels. And, the ordinance is extremely vague regarding distinction is made between developed and undeveloped parcels. Yet, "View" as a criterion, apparently, is not supposed to apply to undeveloped parcels.

Floor area ratio (FAR) triggers for design reviews subject to appeal in the ordinance is arbitrary and capricious and penalize larger lot owners with an expensive and time consuming review process. Where and

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what is rationale for these formula and the apparent penalty?

Ordinance 2004-33 imposed a ten month moratorium on issuing building permits for undeveloped lots citing a "threat to public health, safety, and welfare". This threat is not mentioned in the Environmental Check list of the Initial Study. Where is the required legislative findings to support these assertions?

The moratorium on building permits for undeveloped lots has stripped these parcels of their development rights and need to be reassessed based on this loss if this moratorium is still in effected on January 1<sup>st</sup>. Tax valuation is based on assessment as January 1, 2005, and does not provide for any proration.

Since there never was a "threat to public health, safety, and welfare" the moratorium should be lifted and the implementation of this planning ordinance should become effective only after a full year from adoption. This implementation period will provide sufficient notice of this planning change and mitigate the impact of this unfair moratorium.

The 12/03 version of the ordinance differs substantially from the 8/03 version which was sent to all parcel owners with respect to vacant lots (see page 7's). The 12/03 version should be changed to make it clear what can be expected for vacant lots. ("View" was supposedly not to be a criterion.)

In short, this ordinance and associated environmental documents should only apply to developed lots. Addressing both developed and undeveloped lots that have different criteria is confusing and misleading. There are not many vacant lots left in Kensington (only 46 parcels over 6000 ft<sup>2</sup>), and it would be better to focus only on issues with the developed lots.

- Discussion (excerpts from previous correspondence)

I was aware of the efforts of some of the residents of Kensington to require additional community involvement in approving improvements to existing structures and improvements on standard lots. In essence the same review process would now apply to both substandard (<6000 ft<sup>2</sup>) and standard lots (>6000 ft<sup>2</sup>), whereas before, the review process only applied to substandard lots. Only people within 300 feet of the proposal could participate in the process, whereas before all of Kensington could participate.

Apparently this effort to impose additional review requirements has been going on for several years. In an effort to seek some balance, Supervisor John Goia has arranged for the County to finalize an ordinance for \$30,000 to cover the cost. I have not been involved except for some phone calls and a public meeting relating to a survey last September. I responded to the survey. My impression is that a few activists found that they had only limited opportunity to influence other's aspirations for improving existing dwellings or improvements on lots larger than 6000 ft<sup>2</sup>. Now it appears that this ordinance is a certainty and, in my opinion, will have a **chilling effect** on improvements that exceed a lowest common denominator of the neighbors' opinion.

Ryan, some of the background and development of this ordinance be should included in your analysis along with a quantification of the issues, such as the number substandard lots, compared to standard lots both improved and vacant. Also some discussion as to why this is an ordinance before the Board of Supervisors as opposed to a vote available to all of the affected public would be helpful. Imposing significant additional review requirements on 6000 ft<sup>2</sup>+ lots seems to be matter for the voters. Debate seems currently limited to a few interested people as indicated by the limited response to the surveys (275 out of 2,249 with approximately 220 for and 50 opposed. Minutes of meetings and lists of attendees at which this proposed

ordinance was discussed and evolved apparently are not available to the public. While many of the meetings were apparently open to the public, this ordinance seems to be driven by a select group.

- moratorium

What really surprised and dismayed me was the **ten month moratorium** on issuing any building permits extending until June 2005. On Monday August 30 I had planned on listing for sale several undeveloped lots (24,000 ft<sup>2</sup>) that I inherited overlooking Tilden Park, but I was alerted by my Realtor, Victoria Curtis, of the moratorium. I have to wait until the moratorium is lifted or until it expires in June 2005.

The reason given in the Ordinance (2004-33) for the moratorium was a finding that

“ A threat to the public health, safety, and welfare would result if any land-use entitlements or building permits for residential structures proposed for undeveloped parcels or undeveloped lots located in the Kensington area are accepted and approved before the General Plan is amended and the Kensington Combining District zoning ordinance is adopted. A threat to the public health safety and welfare would result if any land-use entitlements or building permits for residential structures, residential additions, or new or modified residential accessory buildings proposed for conform its located in residential zoning districts in the Kensington area are accepted and approved before the General Plan is amended and Kensington Combining District zoning ordinance is adopted. These acceptances and approvals would lead to a degradation of the unique residential character of the Kensington area.”

Building on vacant lots and improving existing dwellings have been going on in Kensington for at least 75 years and clearly **did not** constitute “a threat to the public health, safety, and welfare,” apparently not until June 29, 2004. **I don't believe such a threat exists today!** At best a constructive notice to the public announcing the proposed changes to the General Plan and review processes might be appropriate, but not a moratorium due a threat to public safety. Baseless statements undermine the credibility of the Board of Supervisors. A blanket moratorium to stop a few projects that would have been previously permitted does not seem fair and smacks of special interest.

Nevertheless, if this moratorium is still in effect on January 1, 2005, then undeveloped lots should be reassessed as unbuildable for the tax year. January 1<sup>st</sup> is the date for determining the appraised value for a parcel, and tax appraisal practices do not provided for a prorated reduction. Board of Supervisors should inform the Assessor's Office this temporary loss of use (no building permits) of the vacant lots if the moratorium still exists on January 1<sup>st</sup>. This would have minimal effect on vacant lots that have been held for a long time but could be significant for recently transferred lots due to Proposition 13 limitations. Existing homes would not be affected, since no improvements would have been made, nor would there have there been any improvements.

- FAR - Floor Area Ratio - (please see table)

In the proposed planning ordinance (Article 84-74.8) there is a listing of lot size with an FAR and a formula which results in a larger house being somewhat ok and not subject to a hearing requirement, unless a neighbor objects. This formula is difficult to visualize and makes it difficult understand what size house (including garage) is acceptable, thus avoiding a hearing requirement. At the public meeting on September 1, 2003, at the Kensington Community Center several people voiced the concern the FAR ratio calculations were unclear and ambiguous. They suggested that a chart listing lot size and floor area rather than a calculation. In my response to the survey, I echoed this recommendation. However, the latest edition of this ordinance, still has formulas and no table. Some background on these formulas and how they were derived would be helpful.

I can see why the percentage of the parcel being used may be, say, 50% for a 5,000 ft<sup>2</sup> parcel due to set back requirements, but I fail to understand why there should be a penalty applied against larger parcels dropping to 34% for a 10,000 ft<sup>2</sup> and declining to 22%. These formulas appear arbitrary and capricious and seem to obscure whatever is intended. Some insight into the rationale for this declining gross floor ratio trigger, particularly as how it is applicable to vacant lots, would be valuable.

#### **Floor Area Ratio Table**

Parcel Area (rounded up next 100) (square feet)	Calculated Floor Area Ratio (square feet)	Gross Floor Area Trigger (square feet)	% Lot Utilized
5,000	0.5000	2500	50.00%
6,000	0.4500	2700	45.00%
7,000	0.4000	2800	40.00%
8,000	0.3800	3040	38.00%
9,000	0.3600	3240	36.00%
10,000	0.3400	3400	34.00%
11,000	0.3270	3597	32.70%
12,000	0.3140	3768	31.40%
13,000	0.3010	3913	30.10%
14,000	0.2880	4032	28.80%
15,000	0.2750	4125	27.50%
16,000	0.2620	4192	26.20%
17,000	0.2490	4233	24.90%
18,000	0.2360	4248	23.60%
19,000	0.2230	4237	22.30%
20,000	0.2100	4200	21.00%

#### **- Arbitrariness of the process**

I am struck by the intrusiveness of neighbors into the affairs of private citizens and their use of private property. I suggest that there be a listing of the rights of the private property owners included in this ordinance, and then move on to what rights and obligations might exist for the adjacent private property owners. Maybe, update the CC&R's (Covenants, Conditions & Restrictions) for the various areas of Kensington. The notion that the review will be less onerous by limiting involvement by neighbors to those within 300 feet as opposed to all of Kensington is disingenuous. My parents found that there were 100 neighbors within 300 feet, and their home overlooked Tilden Park with no neighbors to the east.

Under the proposed ordinance the success of any project will depend on the persuasiveness of the parties and the good judgement of the review panels. While I was impressed by the reasonableness of the KMAC members and Supervisor John Goia at the September 1<sup>st</sup> meeting about the survey regarding the proposed ordinance, I wonder how reasonable people might be in the future. To maximize the persuasiveness, proponents and opponent will and currently retain lawyers and architects to represent their projects before the review boards. (I suspect that supporters of this ordinance might be lawyers and architects already.) This has to add considerably to the cost and the time frames.

#### **- Fees**

The additional reviews that this ordinance will generate will surely require additional county fees in this post Proposition 13 era. Proponents of projects should not be expected to incur these new fees attributable this ordinance. Parties that will have a new right to appeal or object should be required to bear these additional costs that will be incurred by the County.



- General thoughts - Not In My Back Yard (NIMBY)

This ordinance advances NIMBYism and does not contribute or acknowledge the needs of the communities to support affordable and available housing. It selfishly preserves enclaves of quaint, now extraordinarily expensive, housing from the 1950's and earlier when Kensington was the alternative to the status quo. This ordinance encourages alternatives such as making people move out to affordable areas (former farmland) with modern houses, like Brentwood with a horrendous commute. In a broader sense, Contra Costa County should **not** be an enabler of this elitism. If Kensington wants this privilege, it should incorporate and become its own city.

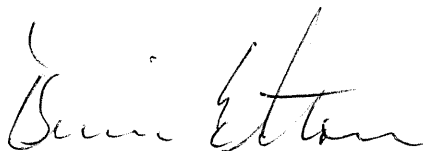
I lived in Kensington from 1951 to 1973 when I moved out of my parents' home at 272 Los Altos Drive. My father had built the largest and most beautiful house on block in 1950 on a substandard lot with a variance placing his garage on the property line. He had little money and depended on loans from the brick mason and the architect. His building materials were recycled from an apartment house that he and a friend deconstructed in Berkeley. In reviewing the minutes of the KMAC (Kensington Municipal Advisory Council) I doubt my parents would have been able to build their house with review processes and neighborhood involvement atmosphere of today. I recently sold my late father's house on Los Altos Drive, but shortly before, I had to meet with a building inspector. Some neighbor had alleged that unpermitted work was being done on the house. Interestingly I had the completed building permit for the last work my father had done in 1981, and patiently explained and showed the building inspector the alleged unpermitted work was merely repainting the interior. The building inspector would or could not provide me the neighbor's name.

I realize I am late to the process of developing this ordinance and would not have the time to devote earlier had I known about it, regardless. Sensing the inevitability of the ordinance, I've suggested some changes particularly to the FAR and assessing the fees to those whom would benefit from this ordinance. I would like to see Kensington again have a dynamicism and a sense of originality, but this ordinance institutionalizes the status quo and adds more inertia.

Please let me know the dates and location of public meetings (Planning Commission - November 30?, Board of Supervisors on December 14?, etc.) relating to this interim ordinance or the planning ordinance. I am looking forward to receiving the Staff Response to any public comments that are received. If you have any questions, please call me at the above number.

Sincerely,

/s/ Brian E. Stone



Brian E. Stone

Successor Trustee

Stone Living Trust dated December 16, 1991

cc: E-mailed to rahern@cd.cccounty.us (RTF format for the above letter)  
 Kate Rauch (Supervisor Goia's Office)  
 David Stone (Trust Beneficiary)  
 Victoria Curtis (Realtor)  
 Owners of Vacant Lots >6000 ft<sup>2</sup> or 0.1337 acres with copies of Oct. 13<sup>th</sup> Notice and  
 Ordinance 2004-33 (moratorium) and August 31, 2003, letter and page 7's of 12/03  
 and 8/03 versions of the planning ordinance

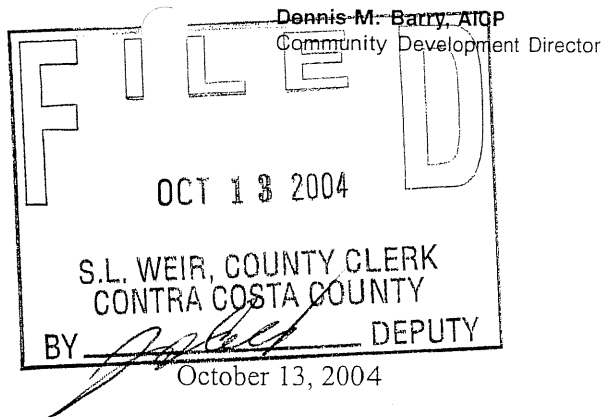
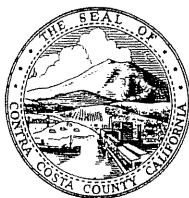
List#	Acres	Parcel #	LastName
1	19.20	015 230 010	Fay Farm Island Llc
2	0.20	570 100 002	Daniels
8	0.24	572 203 012	Gillette
9	0.35	572 034 018	Hanna
11	0.16	570 253 001	Springer
12	0.16	570 253 002	Springer
13	0.18	570 253 003	Springer
14	0.21	570 253 004	Springer
15	0.24	570 253 005	Springer
16	0.35	570 253 006	Kalker
17	0.17	570 253 012	Johansen
19	0.55	571 150 015	Woodworth
20	0.20	571 150 023	Pimazar
21	0.03	571 160 018	Klein
23	0.15	571 070 017	Myles
25	0.28	572 222 003	Cho
26	0.33	572 222 025	Borginino
28	0.59	572 080 005	Concus
30	0.18	572 080 017	Murray
31	0.17	572 181 036	Power
32	0.31	572 080 029	Collins
33	0.18	572 080 031	Taussig
37	0.47	571 160 019	Kwei
38	0.27	573 093 018	Aird
39	0.16	572 011 006	Lieberman
40	0.17	572 021 001	Drolapas
41	0.39	570 232 001	Bowerman
42	0.17	572 029 006	Silva
43	0.26	571 240 018	Travaglio
44	0.56	570 251 014	Stone
46	0.17	570 251 019	Lemmon
47	0.23	572 181 001	Yee
48	0.20	572 203 028	Hanham
50	0.47	572 050 006	Hagen
54	0.18	570 161 009	Naito
55	0.13	571 170 033	Monforte
57	0.20	570 130 031	Bell
58	0.18	572 150 018	Smith
60	0.23	571 170 037	Larkins
61	0.18	571 140 032	Jara
62	0.15	571 070 010	Klaus
63	0.13	571 260 007	Beatty
64	0.20	572 182 006	Winberg
66	0.47	572 160 030	Waxman
68	0.20	570 253 024	Harris
69	0.25	570 253 025	Harris

# Community Development Department

County Administration Building  
651 Pine Street  
4th Floor, North Wing  
Martinez, California 94553-0095

Phone: (925) 335-1210

## Contra Costa County



### NOTICE OF PUBLIC REVIEW AND INTENT TO ADOPT A PROPOSED NEGATIVE DECLARATION

Proposed Amendments to the General Plan and Ordinance Code for Residential Design Compatibility and Preservation of Views for the community of Kensington

Pursuant to the State of California Public Resources Code and the "Guidelines for Implementation of the California Environmental Quality Act of 1970" (CEQA) as amended to date, this is to advise you that the Community Development Department of Contra Costa County has prepared an initial study on the following project:

- A. Proposed Amendment to the General Plan (County File #PG04-0003) – A proposal to amend the Land Use Element of the Contra Costa County General Plan to provide policies intended to assure reasonable design compatibility of new residential development and protection of views within the Kensington community. The Kensington community is located within the western portion of Contra Costa County, immediately north of Alameda County and is approximately 480 acres.
- B. Proposed Adoption of a (Kensington) Ordinance Text Amendment ( /K) (File #ZT04-0002) – A proposal to adopt an amendment to the Zoning Ordinance text to provide for a new zoning district intended to be combined with the existing zoning to regulate new residential development. The ordinance is intended to provide review procedures for achieving reasonable design compatibility with the surrounding neighborhood and protection of surrounding views of natural and man-made features.
- C. Proposed Application of the Proposed Kensington Combining Zoning District to Existing Zoning within the community of Kensington (County File #RZ04-3149) – A proposal to apply the proposed Kensington Combining District ( /K) to existing zoning within the Kensington Community. Currently, the community of Kensington consists of the following zoning districts: (Single-Family Residential – Tree Obstruction of View Combining District (R-6/TOV); Retail Business – Tree Obstruction of View Combining District (R-B/TOV); Planned Unit Development – Tree Obstruction of View Combining District (P-1/TOV); Limited Office – Tree Obstruction of View Combining District (O-1/TOV). The lands within the unincorporated community of Kensington are located generally south and east of the City of El Cerrito, north of the City of Berkeley, and west of the City of Richmond, Tilden, and Wildcat Canyon regional parks.

The proposed actions and environmental review have been taken pursuant to a directive from the Contra Costa County Board of Supervisors to prepare a community-initiated zoning ordinance text amendment for hearing and consideration.

The proposed regulatory amendments, policy additions, and application to the Kensington community will not result in any significant environmental impacts. Consequently, for purposes of compliance with CEQA, staff is proposing the adoption of a Negative Declaration determination for this project.

A copy of the initial study and all documents referenced in the initial study may be reviewed in the offices of the Community Development Department, and Application and Permit Center at the McBrien Administration Building, North Wing, Second Floor, 651 Pine Street, Martinez, during normal business hours. Additionally, the initial study can be reviewed on the Community Development Department's special projects website (<http://www.cocoplans.org/>). Please scroll to "Other" and click the link titled "Kensington Combining District" to review the initial study and proposed general plan and zoning ordinance amendments.

**Public Comment Period** - The period for accepting comments on the adequacy of the environmental documents extends to **5:00 P.M., November 2, 2004**. Any comments should be in writing and submitted to the following address:

Attn: Ryan Hernandez  
Community Development Department  
Contra Costa County  
651 Pine Street, North Wing, 2nd Floor  
Martinez, CA 94553

E-mail Address: [rahern@cd.cccounty.us](mailto:rahern@cd.cccounty.us)

Facsimile No.: (925) 335-1222

The proposed Negative Declaration, General Plan Amendment Policies, and the Kensington Combining District ordinance will be considered for adoption at a notified public hearing of the County Planning Commission to be scheduled at a later date. To this date, please contact the Community Development Department at 925-335-1210. The hearing is anticipated to be held at the McBrien Administration Building, Room 107, Pine and Escobar Streets, Martinez. It is also expected that the County Planning Commission will conduct a hearing on the project at the same hearing.

Dennis M. Barry, AICP  
Community Development Director  
Contra Costa County